

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

BERNARD JASPERS,

Appellant.

No. 37644-0-II

ORDER AMENDING OPINION

The unpublished opinion in this case was filed on May 5, 2009. This opinion is hereby amended as follows:

On page 3, paragraph 3, the sentence that reads:

Jaspers's judgment and sentence became final in 2001.

is deleted. The following sentence is inserted in its place:

Jasper's judgment and sentence became final in 2002.

IT IS SO ORDERED.

DATED this _____ day of _____, 2009.

Penoyar, A.C.J.

Houghton, J.

Hunt, J.

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UNPUBLISHED OPINION

Penoyar, A.C.J. — The trial court denied Bernard Jaspers’s CrR 7.8 motion to amend his judgment and sentence. Jaspers appeals, arguing that (1) his judgment and sentence contains a clerical error and (2) his guilty plea was invalid because he did not understand the consequences of his plea. Concluding that Jaspers’s motion is time barred, we affirm the trial court.¹

FACTS

In 2002, Jaspers pleaded guilty to two counts of first degree child rape. Jaspers’s statement of defendant on plea of guilty stated that each count of his sentence carried a standard range sentence of 120 to 160 months, 36 months of community custody, and a maximum term of 20 years to life. Under RCW 9.94A.712, the trial court sentenced Jaspers on each count to a minimum term of 120 months of confinement and a maximum term of confinement for life. The judgment and sentence stated that “THE INDETERMINE SENTENCING REVIEW BOARD MAY INCREASE THE MINIMUM TERM OF CONFINEMENT.” Clerk’s Papers (CP) at 14. Jaspers did not appeal.

¹ A commissioner of this court initially considered Jaspers’s appeal as a motion on the merits under RAP 18.14 and then referred it to a panel of judges.

In 2004, this court dismissed a personal restraint petition (PRP) filed by Jaspers as time barred. In 2005, Jaspers filed a second PRP, arguing that the trial court sentenced him to a determinate sentence of 120 months, not a longer indefinite sentence as reflected in his judgment and sentence. This court dismissed his petition, holding that the trial court set Jaspers's minimum term of confinement at 120 months and his maximum term at life in accordance with RCW 9.94A.712 and .713.

In 2006, Jaspers moved pro se to modify or clarify his judgment and sentence under CrR 7.8, repeating his argument from his 2005 PRP. The trial court denied Jaspers's motion. He did not appeal.

On October 29, 2007, Jaspers again moved to amend his judgment and sentence under CrR 7.8. He argued that (1) the judgment and sentence contained clerical errors that did not reflect the trial court's intent; (2) the judgment and sentence was facially invalid; and (3) his guilty plea was not knowing and voluntary because the trial court failed to ensure that he understood the consequences of his plea. On April 21, 2008, the trial court denied Jaspers's motion, stating,

[Jaspers] seeks, for at least a third time, an order correcting his judgment and sentence and an order of indigency.

The Court of Appeals has already addressed this issue on the merits and determined that the judgment and sentence is correct as a matter of law. This Court has already determined that the petitioner has exhausted his right to raise the issue of "correcting" his judgment and sentence.

CP at 119.² Jaspers appeals.

² Because Jaspers filed his CrR 7.8 motion before November 1, 2007, the trial court was not under an obligation to transfer it to this court as a PRP. *See* former CrR 7.8(c) (2003).

ANALYSIS

Jaspers argues that the trial court erred in denying his CrR 7.8(a) motion to correct clerical errors in his judgment and sentence. He contends that the trial court intended to sentence him to a determinate sentence of 120 months of confinement, while the judgment and sentence sentences him to an indeterminate sentence of confinement for 120 months to life. Jasper also argues that his plea was involuntary because he was not informed of the direct consequences of his guilty plea.

RCW 10.73.090(1) provides:

No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

A CrR 7.8 motion to vacate judgment or to withdraw a guilty plea is a collateral attack. RCW 10.73.090(2). Jaspers's judgment and sentence became final in 2001. RCW 10.73.090(3)(a) (judgment becomes final on the date it is filed with the clerk of the trial court). When Jaspers filed his CrR 7.8 motion in 2007, more than one year had passed. Jaspers's claims are time barred unless he shows that either (1) the time bar does not apply because his judgment and sentence is facially invalid or it was not rendered by a court of competent jurisdiction or (2) one or more of the six exceptions to the time bar enumerated in RCW 10.73.100 applies. The judgment and sentence is not facially invalid. It was rendered by a court of competent jurisdiction. Jaspers failed to show that any exception applies. Jaspers's CrR 7.8 motion is time barred.

Jaspers's motion to amend because of a clerical error also fails because he has already raised this issue. In 2005, this court rejected this argument in his PRP. We will not reconsider

an identical legal issue in a subsequent appeal of the same case absent a showing that the prior appeal is clearly erroneous and the application of the doctrine would result in manifest injustice. *State v. Worl*, 129 Wn.2d 416, 425, 918 P.2d 905 (1996). Jaspers fails to show that this court's prior holding in his 2005 PRP was clearly erroneous or that a manifest injustice would result from applying that holding.

We affirm the trial court's denial of Jaspers's motion to amend his sentence because that motion was time barred.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Penoyar, A.C.J.

We concur:

Houghton, J.

Hunt, J.